APPOINTMENTS

BY THE

INFERIOR COURTS IN PHILADELPHIA

BRIEFLY REVIEWED.

THE District Court for this city and county has long been the most occupied of all our local courts. During the Summer Quarter of the year, it is most of the time shut: In each of the other three Quarters, nine weeks are allotted to jury trials, held by two judges, while the third judge is idle, except a few hours on Saturdays. Here then, is nearly one-fourth of the year vacant to *all* the judges, and five days per week, of twenty-seven weeks more of the year, that *one* of them is idle. During all this vacant judicial time, the business for which auditors, &c., put so large an amount of the people's money into their pockets, could be done by the judges, whose pay, ($8.62½ to each for every week day in the year, whether idle or not,) is ample compensation for their whole time, and their utmost industry, and it is their official duty to do that business for which they pay their relatives and friends—not out of their own salaries, (as they in justice ought to do if they wish to have their duties performed by others,) but out of the money of every suitor who is so unfortunate as to have it brought into court. Where it ought to be the safest possible, is the very place where it is exposed to the grossest plunder, and very often the utmost fidelity and vigilance of the attorney cannot prevent its coming into court.

Silencing every objector to such a system must naturally be acceptable to those whose gains such objectors endanger. The judges know how readily the zeal, influence and activity of so numerous and interested a body may be used in procuring the re-appointment of those who are most liberal to the corps; and liberality at other people's expense is not inconsistent with any imaginable degree of characteristic stinginess. Were the monies brought into court paid out to the proper owners, the auditors would be deprived of the $50,000, or more, which is yearly divided among them. For were the judges to do their duty "to the best of their ability," there would be nothing for auditors to do in this city and county. But such conduct would now be unpopular. To root up an evil so widely spread, would render an Aristides odious for his integrity, while corruption would be lauded by the bar and press, both of which so largely share these spoils of the people. A statute, however, which would abolish it, would protect honesty on the bench from the odium which restraining its enormities would be sure to incur.

Entertaining these views, after long experience of the subject, I have repeatedly endeavored to draw to it the attention of the public and the Legislature, but I have succeeded *best* (to the evident delight of many interested in the audit system) in drawing upon myself the vengeance of that corruption which I have unflinchingly opposed. The most recent of these endeavors was the following letter, addressed, near the close of the last Legislature, to Mr. Deford, then a very active and intelligent member of the House of Representatives :—

PHILADELPHIA, *April 10th*, 1843.

SIR,—Having observed your efforts, in the legislature, to restrain judges from perverting to unjust ends those forms which we have, in too many instances, borrowed from English courts, I take the liberty, (though a stranger) to address you concerning a practice which, of late years, prevails in the courts of this city. I refer, sir, to what has here acquired the title of "*the audit system.*"

I write to you, sir, in preference to the city and county members, for the above reason, and for the further reasons, that I am unacquainted with them, except with Messrs. Spakman, Whitman and Sharswood—that these gentlemen know already much of what I here state—that Mr. Whitman, or his partner, and Mr. Spackman's brother, an M. D., are of the corps of auditors, and that having, a week ago, written to Mr. Sharswood, stating that a remonstrance on the House's files (against repealing the addition of $600 salary to our District Court judges, made by the act of July 19, 1839,) had been presented to me to sign—that I refused, and that, an hour or two afterwards, those judges tried to expel me, on a charge of contempt, in assigning a reason for a new trial, the facts of which could not be controverted—that I wished to know, from the memorial, who were present, when I refused, so that, by them, I might prove the fact, as I forgot who they were, and desired to get thus their names—but I have obtained no answer.*

Having thus, sir, rendered my reasons for addressing you, I proceed to the subject, which is very important to the public.

Until Joel B. Sutherland obtained sway in the Legislature, about seventeen years since, audits were seldom, and their cost a trifle. After he got Judge King made President of our Common Pleas, Sutherland himself *very often* became an auditor, &c., in that and the Orphans' Court. Though the charges were then comparatively small, they gradually increased both in frequency and amounts, and the practice became odious. Many politicians began to get such appointments, and thus the gains made advocates for "*the system*." There was then no law but English practice to sanction or regulate it, and the charges were often disputed. The auditor's mode

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* Mr. Sharswood had very obligingly, favored me with an answer, but the letter carriers took it somewhere else, and returned it to the Post Office, where it laid till after I wrote this to Mr. Deford. I then, receiving it, discovered the injustice done to Mr. S., to whom I immediately apologized by letter.

then was to renounce his whole charge, and sacrifice his learned labors to the *avarice* of the *niggardly* disputant. This opposition greatly limited the emoluments of the corps, and acts of Assembly were secretly passed to authorize the "*system.*" The abuses, after this, produced a law limiting their fees to $2 per day, and then meeting and adjourning made a *day*, and occurred very frequently, (sometimes repeatedly in 24 hours,*) without an attempt to do business; and even this law was soon stealthily repealed. Their own moderation, or the discretion of the courts, is now their only limit. Not only all this, but the corps soon obtained laws giving it access to the monies of parties in the District Court also; and the act of October 13, 1840, enabling courts to open old accounts, and refer them to auditors, has thus opened a *new* mine for extortion.†

The vacant time of judges, here, exceeds that of any law-judges in the State. Allowing five hours (their longest usual daily session, and very often not half that,) for a day, still, sir, almost two-fifths of their time is vacant, while their high salaries would amply pay for their whole time. This may appear by their own records, one or more (of each court) being almost constantly idle, and proves that they have ample time to do the auditing themselves. The manifest incapacity of auditors evinces that neither the public good nor that of the suitors is the sole object consulted, but especially the interests of the auditor. The practice also is to give most appointments‡ to those who charge most exorbitantly, but to give the most lucrative ones to the relatives and favorites of judges. Were it the intent to devise pretexts to enable judges' connections to plunder suitors, the auditors who charge most would materially aid in such device, as furnishing a standard of charges, compared to which the extortions of the judges' relatives, &c., might seem generous, and challenge praise as such, in case of dispute, yet be gross extortions in fact. Were judges to adopt the rule of Machiavel, "that every man has his price," and had they set out to *buy* supporters to such device, it would puzzle ingenuity to contrive a practice better adapted than the present to such an object. This plundering of suitors has become so common, that if any attorney is hardy enough to be *true* to his clients, every vile wretch is *set* upon him, and his practice is ruined by the malice of judges, who may thus ensure a strong party, at the expense of suitors, to procure their own re-appointment. Harrisburg is not the only place for "lumber speculation," nor bank capitals the only funds used in it.

Just before Judge King's time expired, the Attorney-General and the Governor's nephew here got a number of these audits, and made very exorbitant charges. No wonder that so great an extender, if not the author, of this profitable practice was re-nominated and confirmed. Any knave (much more a talented or acute judge) might thus, at the cost of other people, buy, among a class of men whose vocation is to sell themselves, any number of adulators to trumpet his praises, whether true or false.

It is estimated, by some of the corps, that $50,000 annually of the funds brought into court are thus distributed among them, and they are far from disposed to exaggerate the enormity. The corruption of public justice thus produced, scarcely leaves an attorney a choice between aiding to plunder his own clients or quarrelling with judges,* and then, sir, although you have experienced some of the disadvantages under which he labors, you have little idea of the additions made to it by a venal press *practically* subsidized by this very audit system, by the money of suitors—even of your own clients. In vain, though at a risk involving the means of your own and your family's support, do you strive to defend them, as in duty and honor you are bound to do. Where will this end? Can it be arrested too soon? Is the profession to be made "a den of thieves?" Is the corruption to remain confined to this bar, or even to this profession?

I have committed the unpardonable sin of offering (with the view of suppressing it) to do the whole auditing myself, *gratis.* Knowing that, *on such terms*, there would be little of it to do, I ran little risk by that offer; and though it was delivered, in writing, to Judge King, on the bench, more than eleven months ago, I never was appointed yet; though few of those oftenest appointed are as capable as I am. In making this remark, sir, I by no means *intend* egotism, but mention a notorious fact which *should* make no person *vain.*

You perceive, sir, that I speak chiefly of the "system" in our Common Pleas. The reason is that I *can* speak of that more certainly, having examined its records, and prepared extracts for publication; but the want of funds has hitherto prevented me. I have no doubt that to the practice in other courts the same remarks would apply. The persecutions against me may have for an object the depriving me of the requisite means, and thus be a measure of defence as iniquitous and vile as the

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*They have held meetings repeatedly the same day in different cases.

†This latter act was held back by the Governor until the 13th of October, 1840, and then passed by him. From what appears hereafter, and much more from the inspection of auditors' reports, in their extent, one might naturally be induced to inquire (were there a possibility of ascertaining the fact) whether the Governor's connections here did not stipulate for a large share of the profits, before he signed the act?

‡I meant to except the relatives of judges, of course; as they get the greatest number, as well as the most lucrative audits. Others seem to get only as much as is requisite to make it their interest to advocate the practice, "each according to his price;" but if he were to charge moderately, he would be worse than worthless, and would soon be stricken from the roll of the corps, being "*of evil example.*" I could cite instances of this. Garrick Malary, Esq., of this city, (who can speak from extensive experience on the subject,) as well as others conversant with legal practice in the other counties of this State, say that auditors are seldom appointed, and that when appointed, they seldom make any charge, and when made it hardly ever exceeds a dollar a meeting. Here the great proportion of vacant judicial time makes it a gross abuse to appoint any auditor, unless it was at the request of parties, and at the expense of the party requesting it. The judges here have time enough to do the auditing, and much more, if they would occupy their time *in earning their pay*, instead of distributing the money of suitors among their own dependents.

*One of the auditorial fraternity can hardly object to the exorbitant charges of another, as that would be an infringement on the interests and emoluments of the corps. He is constrained to connive at extortion thus practised on his own clients; but when, in turn, *he* is an auditor, he may practice the like extortion on the clients of the former auditor, and he has a right to expect the like connivance at his own extortion as he had indulged towards the other's. Thus, mutually plundering each other's clients is a direct and natural result of this corrupting audit system; and the story of the two lawyers plucking the geese —their respective clients—becomes no longer a fable, but daily practice. It would soon end in this if not restrain

"*system*" which I assail. I have been more active and decided than others, because, having examined, I am more aware of its atrocity; but am only one of a hundred members of this bar, who, as strongly, but more cautiously, denounced this plundering "*system.*" About a year past, a meeting of the bar was called (not by me) to consider this subject, when it was discussed and strongly denounced, and a vote of thanks to me for the examinations I made and the statistics I furnished, was passed; but there being a thin attendance, it was adjourned and further notice given. The corps became alarmed, went in force to the adjourned meeting, voted every thing their own way, and frustrated that opposition. This result was aided by Kenderton Smith, Esq., who presided at both meetings. He had, meanwhile, an interview with some of the judges; and he assured the meeting that thenceforth the auditings would be more equally distributed, and only among Attornies. Several (of whom I was one) denounced this proposition as disgraceful—not abolishing the extortion, but merely changing, in part, the extortioners. I disclaimed the proceedings, and stated that I would publish the result of my searches. In relation to Mr. Smith (who had then never had an audit) the judges kept their promise, but not generally; nor do the relatives of judges extort less than formerly. It was a trick to silence inquiry and avert scrutiny, as the Ministry tamper with the House of Commons.

I now, sir, beg leave to propose three remedies, any of which would effect a cure.

1. A suitable committee (members from this city or county would be under too great a constraint, if aspiring politicians) of the House to examine on the spot, and the foul stain will appear too gross to permit its longer continuance; but this may now be too late in the session.

2. A law that no audit shall take place except on some *party's* motion, and that the applicant shall pay its expense and give surety to that effect.

3. A law that the unoccupied judges shall do audits after four o'clock, P. M. (the adjourning hour of the courts being three, P. M.) and then they could not make their duties, in this line, clash with the bar engagements of Attornies. This would, in all respects, be the best. Either of these modes would greatly reduce the number of audits, save $80,000 annually to the people by abating the expense, and would greatly diminish the trouble attendant on such audits as would be held.

I have written too much, sir, yet it is far too little to do justice to the theme. I subjoin a statistical table, giving all names so far as I found them on the records; and I wish it were published as widely as possible for the public good. The funds came from insolvents' estates, except one or two. The creditors may thus see where their money went. I place the name of the owner of the estate in the left hand column, that of the auditors next; third, that of appraisers, where the record shows them, (not always the case); next, is the fund; next the cost of appraisement (when found); next to that the fees of auditors; and next after that the aggregate cost of the audits, where they all appear; and last, the total cost of appraisement and audit, when found on record. I reject cents for want of room. (See table, page 4.)

The report amounts to certifying that the account of the executors was correct, and that, of course, the audit was unnecessary. This is mostly the result of audits, except the amounts taken as fees for certifying that fact, which certificate makes it nothing *more* certain.

On the left hand margin of the preceding table, sir, I have numbered the cases. In No. 3, Mr. Brook, the Governor's nephew, is the auditor. Mr. King is brother to Judge King, J. A. Clay is brother-in-law of Judge Jones, and C. T. Jones is his brother; J. W. Newlin is brother-in-law to Judge Randall, and J. R. Longstreth, in No. 23, is a tipstaff in court. He *could* do nothing about an audit but take money—the main object of all. Neither Mr. King, Jones, or Newlin is a lawyer; yet they here decide most intricate questions of both law and equity! This table furnishes a *fair* specimen of the charges. Sometimes the whole fund and sometimes more is charged; and the parties are generally kept ignorant of the state of the report, till paid for. Hope excites them to raise the fees, where the fund is not sufficient; and thus they are duped in several ways at once.

You observe, sir, that the cost of the audit often far exceeds the auditor's charges. No. 8 shows in part how this occurs. (See N. B. p. 5.) Nos. 18, 19, 28 and 32 throw further light on that point, and on how the system obtained advocates and statutes in its favor, and excites the well founded dread of opponents. Nos. 39 and 40 are detailed to explain the same mystery; but it is still mysterious except that those *made* interested in supporting it are rendered quite numerous. In Nos. 2, 7, 12, 13, 18, 27, 32, 35, 38, 39, and 40, two brothers of judges are on each audit. In Nos. 11, 14, 15, 16, 17, 19, 28 and 33 there is none else. In Nos. 8, 9, 22, 23, 24, 25, 26, 29, 34 and 37, a judge's brother is on each. In No. 19 J. A. Clay charges $320, his own fees, (as counsel of the accountant) and not *in full*, but *on account.* He is, as to this charge, party, witness, judge, counsel and attorney! How disinterested is he as to the rest? Comment is superfluous.

The appraisers are often unknown, except by their exorbitant charges. In fourteen cases on this table they appear; and a judge's brother is there eight times, and probably on three-fifths of the rest. "*Court-appraisers*" has become a title annexed to the office here; and where citizens, who practically know the value of the particular kind of goods or property, would charge nothing for appraising, *these* (who have no such knowledge) charge by hundreds of dollars. I have found above 500 appointments of Judge King's brother, (he having been long in office,) while the most favored of the rest did not exceed 70. I had not then finished investigating.

If a rogue wishes to defraud creditors and get the benefit of the insolvent laws, it may be a very grave question whether it be a part of his best policy to make a judge's relative his assignee, and thus divide the spoils of his creditors. (C. T. Jones is very commonly an assignee of insolvents, whatever be the reason of it. The assignee has the use of the money and large per centage out of the estate, besides his expenses, patronage, &c. It is as lucrative as auditing, and hardly comes by chance.

To state the number of meetings is so rare that it seems an oversight, where it is done rather than a deliberate act; and is done mostly by those little experienced. Three or four such instances occur in the annexed table, and furnish a clue to estimate the rate of charges. One of these I have calculated, and makes $9 72 per meeting to the auditors. A meeting seldom lasts three hours, and much more frequently but half an hour, or even less. Thus, sir, to pamper the passions (avarice generally prominent)

[*This arrangement is adhered to in this printed copy, except that before the column of the names of owners of the funds the respective dates of filing the Reports of the Auditors, are put in a separate column for the sake of easy reference. Some remarks in the original table are left out, and placed at the top of the next page, because the printer could not insert them in the table.*]

Nos.	When Filed.	Owners.	Auditors.	Appraisers.	Funds.	Appraiser's fees.	Auditor's fees.	Whole cost of Audits.	Total cost of audits & appraisements
1	March 27, 1841	Acquera & Curren,	Peter M'Call,		13991	50	150	190	240
2	April 9, 1481,	Alex'r. Burden,	T. I. Wharton, W. King, C. T. Jones,	Court appraisers	5090	200	190	239	439
3	June 23, 1841,	Ben'j. Bond,	C. W. Brook,		875		200	231	
4	Feb. 25, 1836,	Brown & Agnew, 1	F. A. Raybold, W. Delaney, Geo. Spakman, M. D. 18 meetgs		2965	100	168	207	
5	Dec. 2, 1837,	Same Estate, 2	F. A. Raybold,		10329		75	182	535
6	Feb. 29, 1840,	,, ,, 3	F. A. Raybold,		570		30	46	
7	Feb. 28, 1838,	De Brot,	Jno. Stille, J. W. Newlin, C. T. Jones,	W. Vodges, M. H. Morris	21283	1100	112	187	1287
8	Oct. 5, 1839,	J. De Angello,	J. A. Phillips, J. F. Macauley, J. W. Newlin,	Court appraisers	872	150	110	275	425
9	Sept. 19, 1840,	J. B & C. W Dyott,	T. I. Wharton, J. R. Vogdes, J. W. Newlin,	W. King, and ——	28573	300	300	436	736
10	June 3, 1837,	E Harlan,	J. R. Vodges, F. A. Raybold, T. Dunlap,	W. King, M. Nisbitt	15078	225	450	822	1045
11	Feb. 16, 1838,	Peter Hill,	J. A. Clay, C. T. Jones, W. King, 47 meetings		4115		300	348	
12	Dec. 1, 1838,	Hutchinson & Stump, 1	J. A. Phillips, King. J. W. Newlin,	A. E. Dougherty	4100	75	180	295	703
13	Nov. 20, 1839,	Same Estate, 2	Same auditors.				100	333	
14	Feb. 19, 1841,	C. D. Harlan,	J. A. Clay,		225596		350	1602	
15	May 24, 1841,	Jno. Hilborn,	C. T. Jones,		63	15	20	27	42
16	Nov. 3, 1836,	J. C. Jenkins, 1	J. A. Clay, W. King, C. T. Jones,		2353		150	338	368
17	Jany. 21, 1837,	Same Estate, 2	J. A. Clay,				30	30	
18	May 8, 1839,	M. & L. Krumbhaar 1	J. A. Clay, C. T. Jones, Geo. Morton,	M. Nisbitt, S. Palmer	30485	400	420	471	2555
19	Nov. 10, 1840,	Same Estate, 2	J. A. Clay,		12668		15	30	
20	Sept. 13, 1839,	Knox, Boggs & McGee,	J. A. Phillips,	M. Nisbitt, C. T. Jones,	1118	410	300	384	794
21	Sept. 11, 1834,	T. R. & W. Lindsay,	F. A. Raybold, Jesse R. Burden, M. Nisbitt,		1918		132	200	
22	July. 1, 1834,	H. H. Lindsay, 1	J. R. Vogdes, King, James Goodman,		173	24	42	60	140
23	Dec. 2, 1837,	Same Estate, 2	J. R. Vogdes, King, John R. Longstreth,		215		37	56	
24	Jany. 12, 1837,	J. H. Lord,	J. A. Phillips, King, W. Delaney,	Court appraisers	4742	100	200	215	315
25	Dec. 3, 1836,	J. R. Marks,	F. A. Raybold, King, Jas. Goodman, 26 meetings,		2158		198	282	
26	No date.	W. Milliken,	J. A. Raybold, King, Jesse R. Burden,	M. Nisbit, Kreider	2058	44	198	282	326
27	Feb. 29, 1840,	Jno. Maxwell, dec'd,	J. A. Phillips, J. W. Newlin, King,	S. Palmer, T. Pratt	22403	100	231	238	338
28	April. 6, 1842,	M'Corkle & Page,	King,	Anthony Groves	15824	40	50	60	200
29	March 6, 1837,	Peltz & Baldwin,	H. Cramond, King, B. Mifflin, 18 meetings,		1583		175	197	
30	Sept. 19, 1835,	J. Randall,	F. A. Raybold, Dr. Geo. Spakman, James Goodman,	W. King, M. Nisbitt	1865	38	106	168	206
31	March 8, 1841,	M. C. Ralston,	Ovid F. Johnson, (Attorney General,)	W. King, M. Nisbitt	10644	150	102	543	693
32	Jany. 30, 1839,	Sappington & Gemmel,	King, C. T. Jones, Geo. Morton,		397		60	136	397
33	April 22, 1842,	Geo. Sterr,	King,	Anth'y Groves, Mr. Ruff	4697	40	100	223	263
34	Sept. 3, 1836,	F. & F. Thibault,	T. Dunlap, King, Dr. G. Spakman,	M. Nisbitt, King	1558	209	180	199	408
35	March 17, 1838	J. Tripler,	J. R. Vogdes, C. T. Jones, King,		1607		149	154	
36	April 7, 1838	J. S. Tryon	William Rawle,	C. T. Jones	11213	60	50	101	161
37	Nov. 15, 1834,	A. Vanamringe,	B. Rush, Jesse R. Burden, King,	King, M. Nisbitt	15456	200	254	269	469
38	June 30, 1839,	N. Vandyke,	C. T. Jones, George Morton, King,		148		51	148	
39	Feb. 12, 1842,	John Savage. dec'd, 1	J. W. Ashmead, King, C. T. Jones,	Orphan's Court	59558		350	937	1952
				Balance of above fund	32679		425	1015	

[N. B. In the aggregate cost of No. 8, on the preceding table, is a fee of $105 to B. Gerhard for professional services. In that of No. 18, there is a counsel fee to E. D. Ingraham of $600, and to P. M'Call of $100=$700. And in No. 19 (being a second audit of the same estate) J. A. Clay, the auditor, allows himself $320, *on account*, as counsel fees; and to James R. Scott, for writing collecting, &c., $1033. In No. 28, William B. Reed is allowed $100 for drawing an assignment. In No. 32 a counsel fee of $200 is allowed to some person not named—probably to him who got up the audit.]

John Savage's estate (Nos. 39 and 40) I further detail for explanation as follows:

No. 39, Professional services (paid to whom? perhaps to one of the auditors) by the executors,	$350
To the clerk of the Orphan's Court for copies of account, room hire, affidavits, advertising, &c.,	137
Bill paid (to whom? again) for various services rendered the executors, writing, conveyancing, &c.,	100
To John W. Ashmead, fee as auditor,	150
To Wm. King, " "	100
To C. T. Jones, " "	100
	$937
No. 40—Report filed 16th December, 1842, (it follows the other quickly and is liberally sliced) attorney's fee,	$350
To clerk of the Orphan's Court, for advertising, room hire, certificate, expenses paid for various services in copying papers,	150
To John W. Ashmead, fee as auditor,	175
To William King,	125
To C. T. Jones, " "	125
	$1015
	937
☞Taken out of one estate in one year *by auditing* (exclusive of executors' commissions and other charges,)	$1,952

and whims of judges is here the way to succeed; not by industry, integrity, or talents. These are all trifles here, compared to flattering judges and giving them bright hopes of large salaries and re-appointments. The mode of obtaining a seat on the bench here, is, to assimilate your conduct to that of those who do not depend on the honorable rewards of assiduity and integrity. Then they readily contract with you to get you a commission, for their own benefit no less than for yours. This they accomplish by *boringly* representing you to the Governor, &c., as swaying this or that sect, club, cabal, or class of people, and holding in your fist their votes. *Instance*—A very inferior attorney embezzled funds of a beneficial society, and was obliged to leave it. Such acts recommended him to the judge makers, who got him a huge petition with bought signatures—at a few cents or a cent each, &c., and he was the chief competitor for the commission now held by Judge Parsons. No honorable man would countenance these arts. Hence the character and conduct of our courts.

The gravity of the evil and a wish to set it forth in full (which I have not yet done) to you, sir, who can attempt a remedy, are my excuse for so long and so close an MS. I am ready to substantiate the facts, herein detailed, by the records and aliunde, should any presume to question them; which I know none will, unless in hopes of averting examination.

This, sir, is entirely at your disposal, and I hold myself responsible for it all.

Your obedient servant,

DANIEL McLAUGHLIN.

32 Prune street,

P. S. The Orphan's Court records are the GRAND mine; but Robert F. Christie, its late clerk, prevented my examining them. Savage's estate, Nos. 39 and 40, shows how his interest lay in concealment, but it is a solitary instance. S. Hart, Esq., late Prothonotary of the Common Pleas, gave free access to all information, his interest notwithstanding.

The following gentlemen I have found appointed in the Common Pleas, the number of times indicated by the figures opposite their names respectively, under the denominations of auditors, examiners, commissioners and appraisers. The auditors were sometimes for very unusual purposes, as to find which was prior of two liens; whether an insolvent petitioner accounted for all the coal shipped to him, &c.; the examiners, in divorce cases; the commissioners, in cases of lunacy, drunkards, and to take depositions; and the appraisers, in cases of assigned insolvents' estates, generally. No doubt a number escaped my notice, as the examination took more time than I could conveniently devote to do it thoroughly.

Appointed	Auditors.	Examiners.	Commissioners.	Appraisers.	Total Appointments.
J. W. Ashmead,	23	9			32
G. L. Ashmead,	1		1		2
S. Badger,		3			3
J. A. Bayard,	2				2
H. H. Brewster,	2				2
C. W. Brook,	3				3
P. S. Brown,	2				2
J. R. Burden,	23				23
J. H. Campbell,	2				2
St. George T. Campbell,	4				4
J. A. Clay,	43	9	6		58
R. T. Conrad,	1	1			2
H. Cramond,	9				9
G. M. Dallas,	2	13			15
W. Delaney,	6				6
J. M. Doran,	4		1		5
T. Dunlap,	9		2		11
G. Emlen, jr.,	8				8
M. G. Ferguson,	31				31
T. W. L. Freeman,					4
J. Goodman,	9	9			18
Anthony Groves,	2			19	21
A. Hampton,				3	3
W. L. Hirst,	2	2			4
E. Ingersoll,	4				4
E. D. Ingraham,	11	2	3		16
C. J. Jack,	2	2			4
O. F. Johnson,	7				7
C. T. Jones,	36	9		17	62
J. K. Kane,	7				7
R. Kern,				6	6
Wm. King,	178	243	57	94	572

Appointed	Auditors.	Examiners.	Commissioners.	Appraisers.	Total Appointments.
E. Law,	3				3
J. F. Macauley,	10				10
Peter M'Call,	6				6
B. Mifflin,	4				4
John Miles,	4		2		6
J. W. Newlin,	24			7	31
M. Nesbitt,	27			52	79
George Norton,	27				27
James Page,	15		2		17
R. Palmer,	3				3
S. Palmer,				8	8
T. M. Pettit,	4		2		6
H. M. Phillips,	13	4			17
J. A. Phillips,	58	4			62
T. Pratt,	6			9	15
Wm. Rawle,	4		4		8
F. A. Raybold,	72	14	17		103
S. F. Reed,		2			2
Benj. Rush,	3				3
J. M. Rush,	2	1			3
Samuel Rush,	7	4	3		14
Kenderton Smith,	4				4
T. D. Smith,	7	11	3		21
T. S. Smith,	12	7	6		25
W. A. Stokes,	3				3
Richard Vaux,	3				3
J. R. Vogdes,	19	21	4		44
Wm. Vogdes,	2	6		22	30
Edward Waln,	3				3
E. C. Watmough,	1	1			2
T. I. Wharton,	34		10		44

Besides those mentioned in the preceding table, the following gentlemen, T. Bradford, B. Gerhard, H. D. Gilpin, R. Hare, jr., S. J. Henderson, J. H. Horn, J. R. Longstreth, S. Miller, jr., P. Oakford, W. B. Reed, H. J. Sergeant, J. M. Scott, R. K. Scott, J. K. Skerrett, C. Wheeler and H. Zantzinger, were appointed once each as an auditor; J. P. Owen and J. S. Tennery once each as an examiner; and J. S. Cohen and C. Naylor once each as commissioner, besides many who were once appointed an appraiser. But as these were not the persons for whose benefit this device was contrived, the reciting of their single appointments is deemed unnecessary; but if space admitted it, they would be inserted, because a number of them appear to have served gratis, while those who are often appointed appear to have generally charged a high rate

The Orphans' Court would exhibit still a worse picture than the other courts, unless the Quarter Sessions be excepted. I have only taken a hasty glance at things in the latter court; but that convinces me of the abuses in it being great. Although juries generally designate the sum which each claimant is to receive for damages on opening streets, &c., there are frequently ground rents and liens on the property to be paid out of that sum; and this (which might be as accurately settled with a calculation in figures in two or three minutes) furnishes cause for an audit, with all its attendant delays and accumulated costs.

Some members of the bar advocate the system, and, to show their disinterestedness and sincerity, tell that they never have been auditors, &c. Whoever examines into the subject, however, will find this but very defective proof of their disinterestedness. It is well known that to approve the system is one of the ways to the favor of judges, but their favor would be of no importance to an honest attorney if they were just men. This indirect mode of propitiating their inclinations may not, however, be the only motive for supporting the system. An examination of a few cases will convince the most sceptical of the great liberality of auditors in granting counsel fees out of the fund, and if none but auditors are in charge of it, they very rarely object, and thus it passes in Court sub silentio, and these large fees are paid, though there be ever so little left. Thus many who are not auditors, profit greatly by the system, in several ways, and are interested in its continuance. I have myself charged, as counsel fees double what I deemed sufficient pay for my service. The auditor approved the charge without hesitation and no exception was made to it; but no sooner was the business settled, than I returned one-half the charge to the party whose money it was. Those who advocate the system are not only in favor with the judges, but also with the auditors; and they are

interested in keeping the control of business and funds as much as possible among themselves, lest illiberal opponents of it might interfere with their emoluments, and attempt to moderate their charges.

I was lately concerned for a creditor of an intestate's estate. The administrator filed an account, which its brevity rendered unintelligible. I applied to the court to examine it, pledging myself that half an hour would suffice for that purpose. This was in last May, when the court had got nearly through the business of the term. Judge King replied, that if they could spare the time, they would grant my request, and would shortly inform me. The next I heard of it was some months afterward, when I found his brother made an auditor in the case. The administrator expressing a wish to avoid the delay and expense of an audit, I applied to the court to vacate it, and examine the account themselves. This was resisted by F. W. Hubbell, Esq., who appeared for the administrator, and who stated, among other facts, that he never was an auditor, and would not accept the office. The audit took place, and the account was represented as a first account only, and all the commissions and fees of administrator, auditor, and counsel were to be taken out of the part of the estate hereafter to be accounted for. This took but a few minutes, and the auditor made a dividend of the whole fund on hand among the creditors. When my client applied for his quota, he was offered more than one-fifth above his share provided he would release; and was assured that he would, notwithstanding his release, get his full portion of the next account if exceeding the sum now offered. I told him the offer was made to get rid of me, and advised him to take it. This F. W. Hubbell, Esq., had advised the administrator to take this course to get clear of me, because I was disagreeable, &c.; and thus when the final account is rendered, there may be in it a large fee to F. W. Hubbell, Esq., safe from any exception of mine. I was no less pleased at my client's gain, than amused by the cause of it, and was not surprised to find an advocate for the audit system either a backbiter of myself, or interested in its abuses.

On the 6th of last October, an auditor's report of R. M'Gregor & Co.'s estate was filed; the fund, short of $8000, the auditor's charge, $158; but he also allowed $150 of a counsel fee to this same disinterested admirer of the audit system. In the next account of the above intestate's estate, he may not be less likely to get a liberal allowance, by having bought off, at his client's expense, those who might impertinently insist on the superior right of creditors to the money.

The following letter, from me, was delivered to Judge King, on the Bench, by a member of the Bar, on its date.

"To the Honorable the Judges of the Orphan's Court and Court of Common Pleas of Philadelphia County.

The undersigned respectfully states that, having observed the very frequent appointment of auditors &c. by the said Courts, and that the funds audited are, in general, greatly diminished or wholly absorbed by Auditors' fees and costs, he has made a lengthy investigation of the subject; and firmly believes that the judicial administration would be improved, and the public benefitted greatly, by disuse of the whole system. Believing also that it would be short lived, were the approbation due to honorable emulation for superiority in learning, industry and talents, the sole emoluments of an auditor, he offers his services, *gratis*, to said Courts, to do any part or all of said auditing that may be necessary.

The lowest estimate which he has heard made of the cost of these audits, was by practised auditors, (not disposed to exaggerate the faults of a system which is very profitable to them, though still more burthensome to the parties in courts) and it ranged between 25,000 and $50,000 annually. If the undersigned can save even the smallest of these sums yearly to the public, in these hard times, he would deem the doing of so much good worth all the trouble it might cause him. All which he very respectfully submits.

DANIEL M'LAUGHLIN."

April 30, 1842.

Many reports of auditors give much trouble and cause much litigation after they are made. A number are referred repeatedly to the auditor, who makes repeated charges and delays, so that the owners of the funds are constrained to get it out of court as soon as possible, and on any terms, while there is any of it left for them to receive. Exceptions are often withheld from this very cause, when there is strong ground for them. The auditor is responsible only to the judges; they confirm his report if none excepts to it; and none excepts to it, because exception would be a new source of expense and delay. The responsibility of an auditor, however, seems to be one peculiarly convenient; for the trouble and cost which he may cause to parties, very far from preventing his re-appointment, are followed by many such favors. As an instance of the patronage to moderate charges, on the other hand, T. Bradford, Esq. was appointed an auditor, held three meetings and made an excellent report, the expense of which was only eight dollars. I found no more appointments of him, though many years had since elapsed. Supposing that so capable and moderate a man would often be appointed, unless he had declined, I enquired; and he said he never declined, but would serve if appointed. It is unnecessary to tell the reader that I, who offered to serve gratis, was never appointed. Low charges would *injure*, but gratuitous service would *spoil* the trade.

Another feature in these appointments is, that as soon as a judge is appointed, his relatives and dependents become instantly capable of all these duties, and the best of appraisers, whether previously experienced in distinguishing the qualities or values of the properties or not, and without regard to prior opportunities of being qualified for the task.

The Audit System in the District Court.

As I could not devote sufficient time to examine all the cases in the District Court, for the city and county of Philadelphia, (the Prothonotary having given every facility that I desired) and as many of the reports of auditors are mislaid or carried ont of the office, consequently inaccessible; and many of those found do not show the charges or expense of audits, I insert in the following table, first the names of the auditors; next the number of reports that I examined of each auditor; in the third column I place only the number of each auditor's reports in which I found his charges stated. The difference between these numbers exhibit sufficiently the number of cases in which the charges were not found. In the fourth column the aggregate amount of all the fees found charged by each auditor for his own services, exclusive of the other expenses, is placed opposite the auditor's name. Cents are omitted.

Auditors.	Number of reports examined.	Reports in which the charges appear.	Fees of Auditors.
Wm. Badger,	12	11	$499
M. W. Baldwin,	1	1	10
Wm. D. Barnes,	6	6	183
James Bayard,	21	21	540
Geo. N. Biddle,	1	1	20
H. Binney, jr.	1	1	50
T. Bradford,	2	1	25
B. H. Brewster,	2	2	60
C. Wallace Brook,	1	1	25
John Cadwalader,	19	18	435
J. G. Clarkson,	6	5	95
John Clayton,	1	1	25
J. S. Cohen,	1	1	75
E. S. Coxe,	29	29	893
Geo. M. Dallas,	26	18	500
E. W. David,	7	7	238
Daniel J. Desmond,	7	6	332
Wm. P. Foulk,	8	8	368
Benj. Gerhard,	5	5	367
Ch. Gibbon,	3	3	575
James Goodman,	4	4	75
Geo. A. Graham,	1	1	10
C. Guillou,	1	1	30
R. Hare, jr.	1	1	20
Isaac Hazlehurst,	1	1	30
S. J. Henderson,	1	1	25
Edward Ingersoll,	5	5	130
E. D. Ingraham,	20	16	406
C. J. Jack,	8	6	255
J. H. Horn,	4	4	175
John Knox,	1	1	00
S. Lewis,	1	1	15
Peter M'Call,	15	15	535
H. McIlvaine,	9	9	388
John Miles,	15	13	366
S. Miller, jr.	3	3	50
J. P. Montgomery,	2	2	105
W. Morris,	1	1	20
James Page,	3	3	130
S. H. Perkins,	13	12	253
H. M. Phillips,	8	8	294
J. A. Phillips.	10	10	224
N. R. Potts,	2	2	90
F. A. Raybold,	9	9	279
Wm. B. Reed,	4	4	110
C. Rheen,	1		
Benj. Rush,	4	3	137
J. M. Rush,	9	9	330
Samuel Rush,	4	4	120
John M. Scott,	5	5	223
H. J. Sergeant,	3	3	110
T. Sergeant, jr.	3	3	50
Kend. Smith,	3	2	150
T. S. Smith,	2	2	40
J. Steel,	1	1	25
N. Strong,	1	1	40
George M. Stroud,	11	11	232
Ad. Traquaire,	1	1	25
G. M. Wharton,	21	20	580
T. I. Wharton,	2	2	55
C. Wheeler,	1	1	10
J. J. White,	11	11	446
W. E. Whitman,	1	1	15
			$11,929

The above number of appointments of auditors exceeds the number of reports or cases which I have examined; for in some cases there were three auditors in each. What was really done, therefore, has cost proportionably more to the owners of the fund than appears in this exhibit. But the fees of the auditors—enormous as these, in many cases, are, and unnecessary as they are in *all*—make scarcely half the real costs of the audits. The cases from which the above table is constructed, have cost in advertizing $4,605 70, and prothonotories received a further dividend of $4,192 82 out of the same funds—and 26 cases were found which did not exhibit these costs. Many others gave only the aggregate, and some only a part of the expense. I found, however, the amount of $24,197 20, as costs, taken out of the funds, under the three heads of auditors' fees, prothonotaries' fees, and advertising, in the cases examined, besides a large amount for searches, &c., which I omitted, because they may have been necessary, but, no doubt, like all the other costs in these matters, greatly overcharged. The advertising, however, is very generally mere patronage to some favorite editor, at other people's expense, by the auditor; and is seldom either necessary or useful, the liens that absorb the fund being generally on record. In the above amount is included the expense of a few reports (not included in the last table) whose authors I unintentionally, through haste, omitted, and I have not time to re-examine in order to insert their names.

The per centage which the prothonotary gets on funds brought into court, is a great evil. The sheriff may refuse to pay over to the parties or their attornies the funds which he collects; and the only way to obtain them, in that case, is to cause him to pay them into court. By this process, a large amount is thrown into the hands of the prothonotary, for what is scarcely any trouble—being merely the handing of his bank book to the sheriff, who gets an entry made in the bank; and the only real service which the prothonotary necessarily performs about the funds is giving a certificate or cheque to the owner or attorney. For this he charges 25 cents, which very liberally pays for all his trouble. But none of the sources of the prothonotary's profit is more productive than this per centage on funds paid into court, and which he gets without any trouble or expense whatever; but is a source of further profit, by rendering his certificate necessary to get the fund out of bank. Were the prothonotary to share this per centage with the sheriff, he might gain greatly by their mutual co-operation. Were such a conspiracy practised, it would rarely be discoverable; and the only incentive to it is this real *sinecure* per centage, which, on that account as well as its being a mere *sinecure*, ought to be taken off the burthens of the people. Courts, when turned into instruments of plundering the applicants for justice, are no longer courts of justice, but sinks of iniquity and corruption; and though some features of that corruption may stand forth in too bold a relief for concealment, the pretexts which corruption is ever seeking and devising, will still hide much from the public gaze.

Who has heard of the above named E. S. Cox being an auditor, except in the court where his brother was a judge, or since his brother left the bench? Until then none was so often an auditor in this court. He is, of course, becoming more learned, experienced and capable every year, yet he is no longer appointed; while others, whose reports show their lack of capacity, are frequently appointed. The very choice which the judges frequently make of auditors, proves that it is not the *assistance* of auditors they want, but to fill the pockets of the auditors with money, committed involuntarily by the unfortunate (for it is a misfortune to any one to have his money in court!) to their custody. Can there be a worse

breach of trust than this? Indeed, any, who will examine the subject, will scarcely fail to arrive at the conclusion, that not a tithe of the depredations which judges thus practice on the property of the people who employ them to guard their rights, is committed by all other depredators conjointly, that infest the county limits. And in what a position do the recipients of these fees stand! It is clear that the system was got up for the use of the relatives and dependants of judges; and because it would not be tolerated were it confined to them, others get only such a share of it as seems sufficient to buy their support to it, "every one his price." Many of the auditors thus view it. It may be said that this is very irreverent treatment of a system established by numerous acts of Assembly. But let any person examine the journals of the Legislature, and see how active auditors and their relatives (when members) have been in enacting these laws, and he will be more fully convinced of their object. How easily can a Philadelphia Lawyer, as a member of the Legislature, procure laws, operating merely in the city courts! His fellow members, if not lawyers, may be easily imposed upon by his representations of facts, which he ought to understand better than they; and if lawyers or hangers on of courts, they may be made interested in carrying on the deception. The country members are still more easily misled; and they generally deem the subject of mere local interest, and of little or none to them or their constituents. By timing their attempts the projectors of many a selfish scheme thus succeed, to the great detriment of the public.

On the last day of the session of 1839, a bill, making an addition of above $20,000 to the yearly salary of the judges, was tacked, in the hurry of a final adjournment, to an act incorporating the Easton Iron Company. And this was done by one of these auditors, at a time when all prices were greatly fallen and still going down—the treasury bankrupt, and the public burthens fast increasing. But this was the way to gain the patronage of judges; and they could pay him (at the people's cost also,) very liberally for this, to them, important service.

As an antithesis to this conduct I will present some of my own and its rewards from judges. G. M. Stroud when at the bar, was one of those whose charge as auditor I compelled him in part to return. The following is the history (thus far) of but one instance out of many, in which he has since, in numerous modes, vented his malevolence on me without any cause whatever, unless compelling said repayment was that cause.

"*Wednesday, March 15th*, 1843.

JUDGES PETTIT, STROUD, and JONES.

Thomas Williams, *vs.* Wm. Foering. } March Term, 1842. No. 397.

And now, March 15th, 1843, it appearing to the Court that Daniel McLaughlin, Esq., an attorney of this Court and attorney of defendant in this cause, having made a motion for a new trial, filed of record in the said Court, a paper, alleging certain reasons why a new trial should be granted; among which is set forth the following scandalous matter, imputing official misconduct to, and reflecting upon the integrity of the Judge before whom the said cause was tried, to wit.—"8th reason. That said Judge misrepresented part of Wm. Dewey's testimony, and denied after his charge and in presence of the Jury, before rendering their verdict, that said Dewey had testified, on said trial, that he had received from defendant two hundred dollars, of the money set off in defendant's bill, by the plaintiff's order; prevented the defendant's bill or claim of set off, from going to the Jury, but kept it himself, and insulted and sought to quarrel with, and to intimidate the defendant's counsel, in the presence of the Jury, while making up their verdict, and thus influenced the verdict prejudicially to the defendant.

The Court did, therefore, of their own motion, enter a rule upon the said attorney, to shew cause why he should not be removed from his office of an attorney of the said court, and be otherwise dealt with according to law, as for a contempt of said court. Returnable on Friday, the 17th day of March, 1843, at 10 o'clock in the forenoon, notice of which rule was given to the said Daniel McLaughlin, Esq., in the open court."

The above reasons for new trial had been filed, by Judge Stroud's own order, ever since the 8th of February; but until the above rule was so dramatically and snare-like sprung upon me, all dissatisfaction with them was concealed. Nor was there any inquiry into their truth! But this was not the first time that Judge Stroud's fury towards myself had exceeded ordinary bounds.

Being beset, however, with importunities to let my answer to the rule be drawn by another member of the bar, I consented to do so, and mentioned Mr. Newcombe—who stood by—as the senior member, and who was best of all acquainted with myself. I, meanwhile, drew up the following answer, myself:

Williams *vs.* Fœring. } D. C. March Term, 1842.—No. 397.

In reply to the rule returnable this morning, I answer as follows:

I have reason to be proud of the uniform approbation of my clients, and can safely challenge the world to point out any instance of my conduct violating professional honor. I have long observed an antipathy against me on the part of Judge Stroud; one evidence of which feeling (unconscious, I hope, to himself) transpired, recently, in this room. On my arguing a motion for new trial, he intimated that his charge had *favored* me. I, without premeditation, replied that this was the first I heard of it. He became very angry at this; but Mr. Ingraham, soon afterwards, on a similar occasion, and with much more emphasis, replied in the same words, yet they seemed to please the same judge. It must have been the persons, then, that made the difference in his feelings.

The eighth reason for new trial (on which this rule is based) is inferred from the following occurrences: At the conclusion of the judge's charge, the plaintiff's counsel handed his bill to the jury, without its being shown or requested by defendant, the judge, or me. I proposed to hand them the defendant's bill of set-off, also, showing it to plaintiff's counsel, who objected; and it was given to the judge to decide, which he did—against me. I then requested him to mark my exception, and to return the bill; but, in a very angry manner, he replied—"I will not give it to you: I will KEEP *this paper.*" This was pronounced with an emphasis and tone conveying, evidently, some imputation against my client or myself What the act or words could mean, I am at a loss to conjecture, but deemed them both insulting; as, after its being withheld from the jury, the paper could have no effect, that I can imagine, for or against either

party or counsel; but it would be useful to me in drawing or discussing reasons for new trial. I made no reply, however, but went to set down. Judge Stroud then said to me, "If you will point out any item in this bill that is proved," (or "on which there is evidence,") "I will let it go to the jury." I again approached the bench and said, "I can point out several, if you hand me the paper." He in his previous manner replied, "You shall not have the paper—sit down! sit down! sit down!"

Without altering my position I waited till he became more calm, and then I attempted to specify from memory the item of two hundred dollars paid for plaintiff to Mr. Dewey. But the judge would not listen, nor let me speak, but he, with increasing anger, and a threatening tone and gesture, shaking his finger at me, and with a blanched countenance, evincing great excitement, said repeatedly, "Mr. McLaughlin! now mind me! (or mind my words!) If you do not take very good care, you will get yourself into trouble." If this was not threatening, and calculated to intimidate, I cannot describe it. But whether entering the present rule without a word of intimation be the execution of that threat, the court know better than I, who have till the moment of its entry been kept ignorant of any umbrage being taken at an act long known to the court.

I waited silently till Judge Stroud had finished what he pleased to say. I then said that plaintiff's witness, Mr. Dewey, had testified to the payment of two hundred dollars of that bill. Judge Stroud retorted that he had not—that Mr. Dewey's testimony was that he had received no part of the four hundred dollars. The jury were present all this time, and one of them, Mr. Hudell, re-affirmed what the judge had said concerning Mr. Dewey's testimony. No person else spoke on this topic, and I simply replied that it was a mistake, and that Mr. Dewey himself would confirm my version of his testimony. Thus ended this scene, by the jury rendering their verdict for the plaintiff's whole bill, and the court adjourned. Being surprised at the amount of the verdict, notwithstanding what had happened, I requested leave of the plaintiff's counsel to copy his bill, which he readily granted; and what I believe to be the result is stated in the ninth of these reasons for new trial.

During the course of the trial, Judge Stroud repeatedly and expressly imputed various professional faults to me—such as want of system, failure to give notice to plaintiff, &c., things which however true, could be no part of the cause. But it was evident that the non-attendance of several witnesses who had been subpœnaed, and for whose production, by attachment, he refused any time, must have deranged any pre-conceived system of trial, and my client testified to my having given him duplicate notices, his having served one of them last October on plaintiff, and mislaid the other since. Yet Judge Stroud imputed this blame to me.

My manner and language during the said trial were entirely respectful to all, and my perseverance in pointing out one item of defendant's bill proved by Mr. Dewey was prompted by a sense of duty to my client, and by the challenge of the judge himself to do so. Mr. Dewey's deposition, since taken under rule of court, on the extra notice of *three days*, (at Judge Stroud's request) to plaintiff's attorney, contains the following statements:—

"I was a witness in this cause between Mr. Williams and Mr. Foering, before Judge Stroud. As nearly as I can recollect, I testified on that trial that Mr. Williams told me that Mr. Foering would pay me four hundred dollars on his account. The question was asked me, I think—Did Mr. Foering pay you that money? I think I answered that he only paid me two hundred dollars. This payment was made to me, to the best of my recollection in the month of November, 1840. I did not testify before Judge Stroud that I had received no part of the four hundred dollars from Mr. Foering, on account of Mr. Williams, and if I was so understood it was a misapprehension."

All reasons for new trial are required, by the books and the practice of courts, to be specific; and the applicant is confined to those which he specifies. I had no alternative, therefore, but either to abandon that important feature of the case, out of compliment to the judge, and to desert a paramount duty which the defendant had confided to me, or to enumerate it among the causes for which I sought redress in the legal and usual mode. It would be vain to say that the judge influenced the verdict, without showing in what respect and manner, and if the facts be true (a point on which—excluding allusion to motive—I am ready to join issue) the alleging of them was an imperative duty; and the terms in which they are stated must be the objectionable part. The word "misrepresented" does not necessarily import corrupt motives or want of integrity, nor have I used it in that sense, but merely to express the judge's misunderstanding and consequent misstatement of that part of Mr. Dewey's testimony, and thus misled the memory of the jury on that point, and was induced to keep from them the whole of defendant's case stated in his own writing, and which the judge still retains, for purposes which he has not disclosed, but which his language and manner evinced to be very hostile to myself.

If the manner, language, and conduct of Judge Stroud towards me, at the close of the trial, was not a quarrel with me, I know not what the term means, and being quite certain that I neither gave, nor meant to give, any cause for it whatever, I know not how I could state the facts in language materially different from what I used, and none can doubt their injurious effect on my client's cause, or my duty to endeavor to prevent that effect.

Reasons for new trial generally impute misconduct to some party; and when they are, as is often the case, for that of the judge, they impute to him, directly or indirectly, the omission of some requisite act, or the suffering of some weakness common to man, without any allusion to motive, which can be known to the actor alone, or to supernatural intelligence. In observance of this rule I made and meant no allusion to motives of any kind, but merely stated what I saw and heard, and what I believed its effect on the case then tried.

These reasons for new trial were offered next morning to Judge Stroud himself, but he, instead of receiving them, requested me to hand them to the clerk, and thus the putting them on record was his own act, not mine.

I have neither said nor written anything, intentionally, contemptuous, or, as far as I am able to see capable of such construction. My sole object was to guard my client's rights, and secure him a fair trial; and none can deter me from performing, to the best of my capacity, that solemn and honorable duty until I become regardless of the sanctity of my official oath, and insensible to every honorable and manly impulse.

I move that the rule be discharged.

D. McLaughlin.

The above answer being disapproved by Mr. Nev

comb, he began to draw one himself. I left my draft in his office. I was, in honor, bound to be guided by his advice, in pursuance of my promise to that effect.

This answer, put in, is contained in the following extract from the record, which, so far as my memory serves me, is not a correct transcript. I applied to the Prothonotary (but he could not find the original) to compare them before this was printed.

"*Friday*, *March* 17*th*, 1843.

JUDGES PETTIT, STROUD and JONES.

Williams vs. *Foering*.

And now March 17th, 1843, the said Daniel McLaughlin to the rule entered on the 15th inst. showed cause by affidavit, as follows, to wit:

"That he did not intend to impute official misconduct nor reflect upon the integrity of the Judge before whom the cause was tried, by the reasons filed by him for a new trial therein or by any of them, and that he regrets having used language in the said reasons capable of being so construed or understood, and he prays your honors to allow him to amend the said reasons, by withdrawing the said eighth reason and substituting in place thereof the following, viz.

That the Judge erred in law in not allowing the defendant's bill or claim of set off, from going to the jury, and was mistaken, in fact, in regard to the testimony given by William Dewey, on the trial of the said cause, in regaad to the receipt of the sum of two hundred dollars, by the said William Dewey, from the defendant, and by the plaintiff's order; and he prays your honors that the said rule may be discharged. (Affidavit filed;) which being read, the Court thereupon ordered that the said affidavit be filed of record in the cause and allowed him to withdraw the said eighth reason, and did thereupon discharge said rule."

Judge Stroud then read the following statement, which the Court directed to be entered on the minutes.

"This cause came on for trial on the 7th of February last. The claim of the plaintiff was the value of a quantity of coal, alleged to have been sold and delivered by him to the defendant.

The plaintiff called but oue witness, William Dewey, who stated that, as agent for the plaintiff, he had delivered to the defendant in 1840, 551 tons of coal; that it was delivered in small quantities upon orders sent by the defendant. After considerable time had been spent in ascertaining from the witness the exact day when each parcel had been delivered, Mr. McLaughlin, the defendant's counsel, said he did not desire this line of examination to be pursued further, as his client admitted that he had received the whole amount of coal which the plaintiff had alleged to have been delivered to him. The price of the coal per ton was not a matter of serious dispute.

The defendant's counsel then opened his defence:

1st. That the coal sold was not the property of the plaintiff, but belonged to him and William H. Mann, as co-partners, and therefore, that Mr. Mann should have been made a co-plaintiff in the action.

2d. That the 551 tons of coal which had been delivered, was only a part of a much larger quantity which the plaintiff had agreed to deliver; that defendant had demanded the delivery of the whole, but the plaintiff refused to furnish more than the 551 tons; that if the whole had been received a large profit would have been realised in consequence of the scarcity of coal in the winter of 1840 '41, which greatly enhanced the price. This loss of profits the defendant claimed to be set off against the value of the coal actually delivered.

The defendant called several witnesses, among whom was William Dewey, who had been examined on the part of the plaintiff.

According to my notes of the evidence, all he said was—

'There was some coal on my wharf of Mr. Williams, remaining there till March,—I think it was overflowed by the flood.'

I believe these were the very words of the witness, and all that he said on his examination by the defendant; when examined in chief on behalf of the plaintiff, he spoke of nothing but the delivery and price of the coal, and his cross examination was, according to my notes and recollection, restricted to the first ground of defence—the partnership of Mr. Mann with Mr. Williams. After the counsel had addressed the jury, I gave a very brief charge. My notes made with a view to the charge are confined to the grounds of defence above mentioned, as taken by the defendant's counsel, and contain no reference to any statement either by Mr. Dewey or any other witness, to payment of any sum by the defendant to the plaintiff, or to any one on his behalf, nor do I believe that I said one word on that subject. I had no evidence on my notes to justify remarks of any kind in respect to such payment; and I had not then, nor have I now, the slightest recollection that any such evidence was received or offered during the trial; nor do I recollect any allusion to it by the counsel till I had concluded my charge. *Immediately* after I had coucluded my charge, Mr. McLaughlin arose, and addressing himself to me, said that Mr. Dewey admitted that he received from the defendant and paid to the plaintiff, two hundred dollars on account of the coal. I replied that I had no such evidence on my notes nor in my recollection, and turning immediately to the jury added,—the defendant's counsel states that I have omitted to say to you that Mr. Dewey admitted that he received two hundred dollars from the defendant, on account of the coal, and paid it to the plaintiff. I have no note of such a statement by Mr. Dewey, nor do I recollect any such evidence given by him, but if you recollect such evidence, you will allow this sum to the defendant. The foreman, and I think several others of the jury, answered instantly,—"Mr. Dewey made no such statement—there was not a particle of such testimony."

The next moment the Plaintiff's counsel called my attention and said,—"Mr. McLaughlin has handed to the jury, or wishes to hand to the jury, [I do not remember which expression was used,] a paper with a long account on it, which was not in evidence." I requested the paper to be handed up to me. I think I received it from Mr. McLaughlin. I looked at it and said to Mr. McLaughlin,—"This paper can't go to the jury." Mr. McLaughlin made reply, insisting upon his right to hand it to the jury, and asserted that such papers were always sent out by the parties with the jury. I told him it was entirely proper for the parties to hand the jury a statement simply of the amounts they claimed, with a calculation of interest, and the like, but that his paper was an account drawn up at length, upon which he had not given any evidence, and I then read out to him the first debit in the account as it stands thus;—

"1840, July 28, To cash advanced on amount of coal, to be received, $65,"—and asked what evidence he had given of any such payment? he replied he had given none. "Nor offered any, I added?"

He replied, "No." Here the conversation would have ended, but Mr. McLaughlin recurred to the topic of the payment which he said, Mr. Dewey admitted of two hundred dollars, on account of the coal, and used a part of the very language which he subsequently transferred to this eighth reason for a new trial. I stopped him at once, and cautioned him against persevering in the course of remarks upon which he had begun. The jury intimated that they were ready with the verdict, which was taken, and the usual hour of adjournment having gone by, the court adjourned. Mr. McLaughlin appears to have filed his reasons for a new trial on the next day, but I was ignorant of their contents, until a few days ago, when the motion for the new trial was to be reached in its order on the list. I think it due to myself to give this statement on this occasion, purposely abstaining from any thing more than a mere narration of what occurred on the trial, and appears to have given rise to the charges contained in Mr. McLaughlin's reasons for a new trial. I have endeavored to recall the precise words which were used by myself, by the counsel, and the jury, and although I will not assert entire accuracy in this respect, I have no doubt whatever, that I have given the substance fully and faithfully."

(When Judge Stroud had concluded, I requested leave to read Mr. Dewey's deposition, but the court would not allow it to be read.)

I would ask, why should a person volunteer to "assert" facts, and yet say, "I will not assert" their "entire accuracy?" Why volunteer a narrative for which he in the same breath refuses to vouch, although he was acting himself in the whole scene that he narrates? Does he not wish his narrative to be believed? Why else is it volunteered to be spread on the record and trumpeted through the press? Records (*heretofore*) were held to be "absolute verity," but here is one, which its author will not assert to be true. A person volunteering to inform us of facts, but concluding by telling us that he will not assert them to be true, or that he does not remember what the facts really were, seems to insult our understanding; and we should inquire whether he possesses common sense, or would artfully impose on our credulity, and at the same time, secure a refuge in an alleged defect of memory, in case his stratagem be exposed and his statement proved untrue. What really occurred, is stated correctly, and in its order of time, in the following publication from the Daily Chronicle.

☞ This was given to the Editors of the Ledger on Saturday last, but they, preferring a one-sided statement, declined its publication:

Messrs. Editors,—Seeing that you have published Judge Stroud's statement of what took place before him on the 7th ult., I hope you will do my client and myself the justice to publish the following version of it, which I pledge myself to be what really occurred, so far as related by him.

The plaintiff's claim (filed ever since suit was brought,) is for the price of 411 tons of coal, and admits an aggregate of $1326 paid on account. His counsel did not minutely detail the items, but did not much vary from this result. When Mr. Dewey was examined, I was inquiring the quantity of each sort of coal, the dates of delivery, and the price of each at the different dates, because these all varied materially throughout. The plaintiff's counsel objecting to this, as waste of time, the defendant told me that he admitted the prices, and this I announced—not admitting the quantity, respecting which there must have been some mistake

Judge Stroud states the first point of defence correctly. The second was, that plaintiff had contracted early in the season—when freights were low, and other dealers offering defendant an ample supply on as good terms—to furnish 1,000 tons, (or more if desired,) and that demand was often repeated, and a written list of the number of boat loads and of the sorts wanted, was furnished to and received by plaintiff, and that till the close of navigation he kept up the expectation of sending it—that on the strength of these assurances of its being sent "next week," defendant rented wharf room, an office, hired a clerk, hands, &c. and went to much expence without ever receiving one boat of coal from the plaintiff, that, at the close of navigation, defendant, at length, apprehending disappointment, procured a few loads from others, but could procure only a small portion then of the amount he wanted, and that for this he had to pay much higher freights than the rates current when he contracted with and demanded it of the plaintiff—that the expense wasted and profits lost by the plaintiff's breach of contract, he claimed to set off against his demand of the balance, and was much greater than it.

All procceded regularly till after the Judge's charge, (except that he allowed the plaintiff's counsel to call and examine his witness repeatedly, and refused the same privilege to me, in relation to one important witness, who was plaintiff's brother-inlaw) and then plaintiff's counsel without objection, gave the jury his bill. I did not give them mine, nor did plaintiff's counsel say so; but I showed it to plaintiff's counsel, to hear if he had objections to its going to the jury—he objecting, it was handed to the Judge to decide, which he did in plaintiff's favor; and I requested him to note my exception and to return the bill, [which would be useful to me in drawing and discussing reasons for a new trial, but could be of no possible use to the Judge or any person, else, after its being kept from the Jury,*] but he, in a tone somewhat excited, replied, "I will *not* give it to you—I will *keep* this paper."

I made no reply, but was going to my seat or had sat downw hen he said to me,"If you will point out any item in this bill that is proved, (or "on which there is evidence,") "I will let it go to the jury." I returned and answered, that I could point out several if he would hand me the bill. He again refused it, and mentioned the first item, on which I admittedlthere was no evidence; but, (I was going to add) it was credited in the plaintiff's statement on record. He did not listen, nor suffer me to finish the sentence; but, getting angry, ordered me to sit down. I stood calmly and silently where I was, while he, with a blanched countenance, and a tremor evincing great anger, and vehemently shaking his finger at me, and loudly repeating my name several times, said, "Mind me, (or mind my words) if you don't take very good care, you will get yourself into trouble!"

As soon as I thought him calm enough to hear, I said that the plaintiff's witness, Mr. Dewey, had proved the payment of $200 of that bill, part of $400, which plaintiff had promised him. Judge Stroud, much more calmly replied, "he has not—Mr. Dewey's testimony was that he received *no part* of the $400;" and appealed to the Jury. Their Foreman confirmed what the Judge said on that point. No other person spoke on it; and I remarked that it was a strange mistake; but that Mr. D. himself would confirm my version of it. The scene ended by the jury rendering their verdict for the plaintiff's whole bill, of course.

Mr. Dewey's deposition, since taken, confirms, both *affirmatively* and *negatively*, my version of what he had testified. This shows how the administration of public justice suffers from hurry and its consequent mistakes. I have no doubt the jury will yet remember, and will honorably confirm my statement, for they viewed the whole scene.

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* This is my own inference, not what I then said.

I thought that I had a right to ordinary civility, and that every suitor, (my client among the rest) had a right to his Attorney being heard, without anger, threats, insult, or intimidation; and that, if even the most just of men would happen to be betrayed into passion, that it *might*, and, if influencing the result of the trial, *ought* to be stated as a cause for another, and that doing so was not imputing want of integrity. We often find honest men passionate, but it is not the mood in which justice *should* be administered.

The disposition of the Rule on me was in the ordinary form, of which there are numerous precedents; but, in my case there was no ground for it, without a forced construction of the writing.

D. McLAUGHLIN,
32 Prune Street.

March 20, 1843.

To the Editors of the Public Ledger,—

The Court this morning, without any notice or allowing any explanation, opened or restored, and made absolute the rule which they had discharged on last Friday. I am not conscious of having done, said, or written any thing but what was in the honorable discharge of my duty, and what the *necessity* of the case imposed on me. The above is farther evidence of my not designing to impeach any person's integrity. I knew well that the Court could not try such a question, and to raise it there would be useless, and likely to be deemed a contempt. I *did not* do so.

D. McL.

Monday, March 20, 1843.

Judges Pettit, Stroud and Jones.

M. 1842, 397. *Williams* vs. *Foering.*

And now, Monday, this twentieth day of March, eighteen hundred and forty-three, the Court having seen a publication by Daniel McLaughlin, in the newspaper called the Daily Chronicle of the 18th instant, (and acknowledged by him in open court to be his act,) containing language, concerning one of the judges of this court in reference to the same matter which was the subject of the said Daniel McLaughlin's answer, made on oath on the seventeenth instant, to the rule upon him entered on the fifteenth instant, which language is as follows, to wit:

"When Judge Stroud was at the bar he got into his pocket twenty dollars or more of a client of mine under the name of an auditor, appointed by his father-in-law; but I cared not either for him or his father-in-law, and made him pay it back. Since he got upon the bench I have had many causes to remember it, but I never regretted having honorably done my duty."

And which being published so as to exhibit its direct connection with the matter which was the subject of his said answer, obviously and offensively, and in opposition to the terms of his said answer, disclaiming any intention to impute official misconduct, or to reflect upon the integrity of the said judge, that in his official action upon the *occasion* referred to, as well as on other *occasions*, he was influenced by unworthy and base personal resentment, growing out of an alleged former transaction, and which, particularly when considered in connection with the following paragraph also contained in the said publication—to wit—

"The words which the Court were pleased to construe into contempt, were not only not intended to convey the sense imputed to them, but *incapable* of doing so, without a strained and unfair construction of them, as any person may see by consulting a good dictionary. I was not allowed to know this construction being given it till the rule was entered.

The whole display was unnecessary, unless to injure my business. That I will not allow it to do. I will do all professional business for less than a quarter of the usual charges, and no client has ever been dissatisfied with my conduct."

Makes it manifest that the reliance which the court were disposed to place upon the sincerity of his said answer, was without foundation; that the court in discharging the said rule were *misled* by an artifice which it is necessary to assert cannot be allowed any longer to prevail. It is considered and adjudged that the order made on the seventeenth instant discharging the rule to show cause why Daniel McLaughlin should not be removed from his office of an attorney of this court, be vacated and that the said rule be made absolute.

The court directed a copy of the Daily Chronicle of the 18th of March, 1843, to be filed in the Prothonotary's office for preservation.

Immediately after this farce, Judge Pettit laughed and jested with several members of the bar, saying that I was very much frightened; an idea which gave him great delight, in the same mode that the agonies (real or supposed) of his victims, delighted a Nero.

I paid no attention to this manly and honorable merriment, but applied to the Supreme Court for a writ of mandamus, and the following is its decision on that application.

Commonwealth, ex-relatione McLaughlin. *vs.* The Judges of the District Court, for the city and county of Philadelphia.	Motion for a rule to show cause why a writ of mandamus should not issue to the District Court, for the city and county of Philadelphia, to restore Daniel McLaughlin to be an Attorney of said Court.

After the argument of this rule, the opinion of the Court was delivered by

ROGERS J.—It is ruled in the Commonwealth, ex relatione Breckenridge, v. the judges of the Court of Common Pleas of Cumberland county, (1 Serg. and R, 187,) that the admission of an Attorney of the Court of Common Pleas is a judicial, and not a ministerial act, and for that reason not the subject of a writ of mandamus. That case is an authority directly adverse to the present application. In principle there is no conceivable distinction between them. If the admission of an Attorney to the bar be a judicial act, by parity of reasoning, his dismission must be judicial also. If we cannot, as is decided, give relief in the one case, it is as difficult to imagine from whence we derive the power to interfere in the other. If the first is judicial, the last cannot be ministerial.

In the case cited, the authorities relied on in the argument here were reviewed by the Court, and for reasons which it is impossible to controvert, and needless to repeat, were declared inapplicable.—The District Court is a Court of record, and although a subordinate, cannot be considered as an inferior Court in a judicial sense. It is an inferior Court only in the same manner, and to the same extent, as the Court of Common Pleas in England is inferior to the King's Bench, the King's Bench to the Exchequer, and all the Courts in the Kingdom to the House of Lords, and may serve to illustrate the distinction; for no case has been cited where an attempt ever has been made to restore an Attorney by mandamus, who has been stricken off the roll by order of

either of those Courts.* Although to an inferior Court, to the Mayor of Reading, for example, (1 Ventris 11, 1 Sid. 410,) such a writ has been issued. Courts of record and of general jurisdiction, are vested with extensive powers to regulate the conduct of their own officers, and in this respect their decisions are put on the same footing with that numerous class of cases which is wisely confided to the legal discretion and judgment of the Court having jurisdiction over the subject matter.

In the case of Austin and others, 5 Rawle, 191, it required the aid of an Act of Assembly to give this Court jurisdiction ; and this is a strong, if not a conclusive argument, against the motion.

The relator was an Attorney of the District Court, and, as such had sworn that he would behave himself in his office of Attorney within the Court, according to the best of his learning and ability, and with all good fidelity to the Court, as well as to the client; and if he violates this obligation, he is liable to suspension, removal from office, or to such other penalties as have hitherto been allowed in such cases by the laws of this Commonwealth—72d section, Act of 14th April, 1834.† It is proper to remark, that the power of the Court to punish the official misconduct of their officers, is expressly reserved in the act of the 16th June, 1836. In Austin's and others, 5 Rawle, 191, it is held that it is a breach of professional fidelity to attack the proceedings of the Court, for impure and improper purposes, through the medium of the public press;‡ for such an offence the Court may properly exercise the power given them, to suspend or expel an Attorney from his office. Indeed, without this power, and its occasional exercise, Courts themselves would be brought to public odium and contempt.§

It was for this offence that the District Court thought it proper to suspend the relator from functions which he has abused.* The 10th section of the act of June, 1836, declares that besides the power hitherto possessed by the Supreme Court to issue writs of mandamus, the Court shall have power to issue such writs to any other Court or tribunal, constituted by the authority of the laws of this commonwealth, in all cases where such interposition shall, in the discretion of the said Court, be necessary to the advancement and due administration of justice. This, it is said, enlarges the power of this Court, and in one respect it certainly does, as it puts an end to the vexed question, whether the Supreme Court, in any case, can issue a mandamus to a Court of record of general jurisdiction, an authority doubted in the case of the Commonwealth, ex relatione Breckenridge, v. the Judges of the Court of Common Pleas of Cumberland county, and in the subsequent case of Morris v. Buckley, (8 S. & R., 215.) To what extent this jurisdiction is enlarged by the late act, will be the subject of further adjudication. It may, however, be affirmed, that if it should so happen that a subordinate Court should refuse to execute an order or decree of the appellate Court, they may be compelled to perform their duty by this process. Further it is not necessary, at this time, to go, as we see nothing in the act which gives the Court a supervisory power over that class of decisions which is the subject matter of the relator's case. And we are confirmed in this impression by the 23d section of the same act, in which (be it observed) the Legislature have been careful to preserve the control hitherto vested in the several Courts over the conduct of their officers. We see nothing in this case which calls for interference, on the hypothesis that it is necessary to the advancement and due administration of justice. There has been (as is not denied) a regular hearing on notice in a case within the acknowledged jurisdiction of the Court.¶ We have not been favored with a copy of the publication,** which we are given to understand was the cause of the relator's expulsion from the bar. But, aside of this objection, which is one of form, it is a decisive answer to the application, that the District Court has exclusive jurisdiction of the case under the constitutional responsibility, and that this Court have no authority to give relief to the relator in this or in any other form, whether by certiorari, appeal, or writ of mandamus.

Motion overruled.

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* Blackstone (3 Commentaries, ch. 4, page 32) begins, at the lowest, to enumerate the public courts, ascending gradually "to those of the most extensive and transcendent power." The Common Pleas (treated of at page 37 and seq.) is the 5th in grade, and the King's Bench the next, treated of at page 40, where he terms it—"the supreme court of common law." Is it not absurd to style a court supreme, (which means more than mere superiority,) and to say that other courts are not inferior to it? At page 42, he says—"The jurisdiction of this court (the K. B.) is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined here or prohibit their progress below."

No more was asked by the relator; nay, he asked only for an inquiry, satisfied that the violation of the law by the District Court would, on inquiry, be manifest.

† But where is the law that authorises our courts to remove for an alleged or real contempt? The Supreme Court or any other cannot show it.

‡ The "fidelity to the court," mentioned in the law, is that of honest candor in stating facts, so as not to mislead the judges in administering justice ; not that servile fidelity which would make him conceal their crimes, or assist them in committing such crimes. Such servility, however, the Supreme Court seems here to insist on; and it is the more absurd because in our country the judges are the hirelings of the people; not the agents of a monarch, as in England. But this is irrelevant, since the passage of the act of 16th June, 1836, Sections 23, 24, and 26, (Purdon, 240) which was not in existence when Austin's case was tried.

§ Courts can never be more obnoxious to odium and contempt, among an intelligent and virtuous people, than when they, under color of authority, act maliciously and corruptly and violate the law, which they are sworn to administer. And their conduct is still more contemptible and odious, if they combine to screen each other's corruptions.

* The affidavit, hereafter inserted, was all the evidence that was before the Court; and it contains nothing to warrant this assertion, which is wholly untrue in point of fact.

¶ The truth of this whole sentence is contradicted by the following affidavit—the only evidence in the cause. Every assertion in this sentence is the very opposite of the facts. The reporter of the Court, has withheld the affidavit. The Syllabus, which he prefixed to the case says that the "Supreme Court *will not*," etc., whereas the Court itself says, in the conclusion of the opinion, that it has no authority to give relief," etc. This is a fair specimen of *our* reporting.

** It would indeed be informal in the relator to give the publication ; *that* would be the part of the respondent if the rule were granted. But let the reader turn to Section 21 of the act of 14 June, 1836, (Purd. 724) and he will see how greatly the judges of the District Court were benefitted by the refusal of the rule. Here follows the said affidavit. The reader can examine it for the

The above opinion, preceded by the affidavit and various reflections, were published in the Key Stone at Harrisburg, on the 24th of May, 1843. It was shown to me on the 28th and next morning I wrote the editors the following letter, which they never published.

Philadelphia, May 29, 1843.

Messrs. Editors,—One of your subscribers favored me with your paper of the 24th inst. containing my affidavit and application for "a rule on the District Court for this City and County, to show cause why a writ of mandamus should not issue to restore me as an attorney of said Court," and also the opinion of the Supreme Court on refusing the rule.

Your correspondent's attention (I am sorry to find) is so engrossed by myself, that he scarcely notices the important cause which he has given through you to the public; and yet he conveys the idea that I am not a brother of much note. If he is not one of little knowledge, he must be aware that I am the most noted in the State for the persecutions which I have sustained and defeated, in spite of all the frauds which the most corrupt could practise. His personalities are hardly equivocal, but I feel myself called on to deny only, that I ever observed or mentioned any affinity between the Irish, Greek, and Saxon tongues. If it exists, I am too ignorant of them to know it. His *simile* of the cavalier and rats may prove more *apropos* than he seems to suppose it. My contest is wholly against such vermin which have, under the name of auditors, &c., been nibbling monies of my clients, detained in court, apparently, for that purpose. The most voracious of these, (and for whose sake all the rest are encouraged and employed) are relatives and sycophants of judges; and I have incurred their fury by having in some instances compelled them to disgorge their prey, even after they had gulped it, and in others deterred them from touching it. They therefore try to make an example of me in terrorem of others who would be faithful to their clients, but the event will be the reverse of their expectations. They may destroy me, but I shall, in some degree, imitate the cavalier, and my exertions in future shall not be relaxed in the contest. To expose to the people the doings of these depredators, and their assistants on the bench, is all that is necessary to destroy their power, and all the laws which, by gross misrepresentations to the Legislature, they procured to sanction their peculations. Their pretence—that the time of judges was so much occupied here by judicial duties as to need the aid of auditors—is one of the sheerest impostures that ever fraud contrived. The only need in the business is the need of the auditor to grab a part of the money of somebody in court.

This opinion of the Supreme Court establishes the law of Pennsylvania to be, that the fate of attornies depends solely on the will of judges, who may at any moment and without the shadow of cause, or the slightest warning, not only destroy the means of support of attornies and their families, but also the interests of clients confided to the integrity and intelligence of such attornies; and stigmatize the purest virtue with calumny, which cowardly and artful corruption may, by preventing a hearing, force to pass current and uncontradicted.

The profession have never supposed their condition to be thus far degraded or precarious. They have heretofore generally thought that their fate, like those of other persons, depended on their good conduct, and that, whilst they violated no law, nor even any rule of court, the law was a shield to them, as well as to the rest of the community; and that they were as independent of their own hirelings on the bench as any other citizens can be. In the celebrated case of Austin and others, decided in 1835, the Supreme Court spoke of certain *rights* which law secured to attornies, and though the Legislature has since (by the 23d and 26th sections of the act of June 16, 1836) meant to put these rights on a secure footing, beyond reach of assault from a spiteful or malicious petty tyrant on the bench, as in that case, yet in my case, though the said law was since passed, the same court seems to lose sight of all such rights. Though Austin's case also produced the section X. of the said act, which expressly gives the Supreme Court power to issue writs of mandamus in all cases which it may deem proper, WITHOUT ANY RESTRICTION, this opinion decides that THE COURT HAS NO AUTHORITY to issue such writ to restore an attorney, who has been, expelled without cause, notice, charge, or hearing.

The Supreme Court does not deny that the case was a proper one for such writ if they had the power to issue it—the denial is based on their want of authority. The reasoning from the fact that no such writ from the King's Bench to the Common Pleas of England can be found is of no force, because no application for or refusal of such writ can be found either, and the cause of that is that no attorney was ever expelled by either of these courts for defending *his cli-*

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dence that I had "abused" my functions, (see note * ante) or of the Court's assertions, (see note ¶ ante) that "there has been a regular hearing on notice in a case within the acknowledged jurisdiction of the Court." If the affidavit does not contain that evidence the Court had no other, and I thought that it contained a very positive denial of all these facts, though I could not have foreseen when I made the affidavit that they would be alleged.

IN THE SUPREME COURT OF PENNSYLVANIA, FOR THE EASTERN DISTRICT—CITY AND COUNTY OF PHILADELPHIA.

Daniel M'Laughlin, of the said city, Attorney at Law, being sworn, deposes and says, that he has been duly admitted as an Attorney at Law in the District Court, for the city and county of Philadelphia, and has practised therein as such, for many years last past; but that, on the twentieth day of March, last past, the said District Court, without any previous intimation, or just or lawful cause or authority, removed him from his said office of an Attorney at Law of said District Court, for the alleged cause that he had, on the eighteenth day of said March, caused a certain publication in the Daily Chronicle—a newspaper published in this city—that the said publication contained nothing untrue, criminal or improper, and was rendered necessary to sustain his reputation against false aspersions, cast upon it in other newspapers, as he verily believes—that he has always performed the duties of his said office according to the best of his learning and abilities, and never in any manner misbehaved therein; and that he has in all respects a right to practice as such in the said District Court, but is prevented therefrom contrary to law, and has no other remedy for the injury thus done to him, than to apply to this Court for a writ of mandamus to restore him to his rights, as he verily believes.

DANIEL M'LAUGHLIN.

Sworn and subscribed, in open Supreme Court, this 12th day of April, 1843.

J. S. COHEN, *Prothonotary*.

ents from the plunder of judges and their relatives, nor for any other cause but dishonesty or crime, (which my cowardly enemies dare not impute to me) and after a fair trial and full proof of the charge. The same reasoning is more foreign still to the question since the said tenth section became a law. Nor can the allegation that any other court is not inferior to the Supreme Court be, I apprehend, understood by a legal mind; as it would seem to make all equally supreme, which would be absurd.

This opinion seems to reverse the doctrine in Austin's case completely, and to result in this—that attornies hold their office solely dependent on the caprice of judges, a tenure which gives to clients no assurance of their integrity or independence—a tenure which would enable any vile knave who can buy a nomination from a lumber dealing Governor to say to the suitors and the public—"You *must* employ and trust this dependent or that sycophant of mine—for I will let none else practice at this bar." This would be "*amplificare judicium*" to the "*ne plus ultra.*" Were this to remain as law, revolving pistols would be as necessary for an honest attorney to take into court as his brief.

Since section 10 of article vi. of the amended Constitution has secured cowards from the risks of a challenge, there is no limit to their habitual insolence. The like was never seen till they obtained this imaginary ægis for their protection, and lynch law must become a necessary substitute for the abolished law of honor.

The last paragraph of the opinion opens with an allegation of a fact of which the court had no evidence; for all the evidence of facts that was before the court was in the affidavit which precedes the opinion, and it explicitly denies the said allegation. If the court obtained any other evidence it was such as dared not to encounter scrutiny, and was therefore unworthy of credit and of the Court's attention. Near the end of the same paragraph occurs a more surprising mistake of fact, where it is said, "There has been (as is not denied) a regular hearing on notice in a cause within the acknowledged jurisdiction of the court." Nothing could present a fuller denial of this state of facts than the said affidavit. But this sentence will seem unaccountable to those who noticed my argument for the rule—the burthen of which was that the 23d, and more especially the 26th section of the said Act of Assembly, excluded the District Court (which has civil jurisdiction only) from cognizance of the cause at all—and that it was in no way punishable unless as a libel, which no one was fool enough to term it; and that even if it were a libel, that was neither the form nor the forum to try that question.

These errors of fact in the opinion (if the MS. has been rightly read, which I think doubtful,) might help to *make* a case to suit the opinion which (as deciphered) seems to have little relevancy to the case actually presented to the court in the affidavit or the argument. Your "legal friend" has therefore done well to spread it before the public, whom, both as attornies and clients, it so deeply concerns. I hope you will do me the justice, gentlemen, to publish this antidote to your friend's favors.

Your obedient servant,

DANIEL M'LAUGHLIN,
32 Prune st.

The above "legal friend" was the convoker of the first of the two meetings of the Bar, (mentioned on page 3) and at the second of said meetings he declared that he would never receive a cent from the audit system. Since then, he is a patent auditor, and charges very liberally. No wonder that any opinion of any court or any thing else, libelling or calumniating me, would be published by his friends, nor that they would refuse to publish any antidote

Thus I have laid before the public faithful spec mens of the audit system in two courts, the two i which its cost is (I have no doubt) proportionably the least. To warrant this conclusion I have given one case from the Orphan's Court, and the reader may form some idea of the auditing in that court from what that case presents. This would have been presented to the public much sooner, and fuller, had not the persecutions in which I have, in consequence of my opposition, been involved, disabled me from laying out the necessary expense of a fuller exposition

I have also laid before the public the proceedings against me in one of those courts, and its own representation of the cause and manner of those proceedings. I have in vain looked to the law and its organs for protection—even my application has been answered by misrepresentation of facts. I have applied to the Prothonotary of the District Court for an exemplification of its records touching my expulsion from its bar, but, after about ten days spent, in promises and excuses, his deputy refused it, unless I would pay for a transcript also of Judge Stroud's statement and other matters that had nothing to do with the court's action in my case. I have however furnished a copy of said record to the Legislature as soon as the Prothonotary had refused it.

Thus I have acted in defence of my own rights and those of my fellow citizens, both as suitors and attornies; nor shall I succumb even if the Legislature were to sanction those plain violations of the laws, and refuse either to vindicate them or to listen to my petition. I have done my duty to the public and to myself in presenting that petition. I have asked no person's advice or co-operation in regard to it. I have thus done all that is necessary to test the fact whether our public institutions protect individua rights.

DANIEL M'LAUGHLIN.